IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

MFA.No. 1269 of 1995()

OPMV.371/1988 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

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APPELLANT/3RD RESPONDENT:

UNITEDINDIA INSURANCE COMPANY LIMITED
MOUNTROAD, MADRAS REPRESENTEDY ITS MANGER
THIRD PARTY CLAIMS CELL, ERNAKULAM.

BY ADV. SRI.A.A.MOHAMMED NAZIR

RESPONDENTS/CLAIMANTS 1,2 & RESPONDENTS.1,2 & 4:

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1. BIJU APREM,PAZHUYANKAL HOUSE, NOW RESIDING AT CARIYIL HOUSE, CHIRAKKADAVU, KANJIRAPPALLY.

2. BEENA APREM, PAZHYUANKAL HOUSE, DO DO. DO.

3. M.J.MATHEW ALIAS RAJU, S/O.JACOB, MUKALEL HOUSE, KANJIRAPALLY P.O.

4. N.A.KRISHNAN, S/O.AYYAPPAN, NADUKKUDI HOUSE KIZHAKKUMBHAGOM P.O., THODUPUZHA.

5. JOSEPH APREM, PAZHIYANKAL HOUSE, CHIRAKKADAVU, KANJIRAPPALLY.

BY ADV. SRI.MATHEW JOHN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/10/2006, THE COURT ON 20/11/2006 DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.4864 OF 1995 IN M.F.A.NO.1269 OF 1995

//DISMISSED//

20.11.2006. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J

M.F.A.No.1269 OF 1995

Dated this the 20th day of November, 2006

JUDGMENT

Does the dismissal of an earlier application by their father, with them on the array of petitioners, bar the minor claimants from subsequently applying for compensation on account of the death of their mother in a motor accident ? This is the only ground on which the appellant insurer challenges the award of the Motor Accidents Claims Tribunal.

2. The claimants lost their mother to a motor accident on 26.9.1976. While the second claimant was still a minor, the application for compensation from which this appeal arises was filed on 4.5.1988, within three years of the first among the claimants attaining majority, and is therefore, undisputedly, within time.

3. The claimants' father filed O.P(MV).No.199/84 arraying them also in the list of petitioners and claimed compensation

supported by an application to condone delay under the Motor Vehicles Act, 1939. The Tribunal dismissed that application as against the first respondent therein, on the ground that bata for service of notice was not duly paid. Thereafter the Tribunal tried that case and, by Ext.B1 order, dismissed the application to condone delay by holding that no sufficient cause is shown. It also held that it was not proved that any compensation was due on account of the death.

4. Ext.B1 was put in defence by the insurer, to the claim petition from which this appeal arises. The Tribunal repelled that contention.

5. On the strength of Ext.B1, in support of the appeal, it is argued that if it were a case where the next friend of the minors was guilty of gross negligence in the prosecution of Ext.B1 case, the remedy would be only to set aside that order on ground of negligence of the next friend and still further, unless fraud and collusion are also proved, Ext.B1 cannot be set aside even in

such proceedings. In support, reference was made to the decision of the Apex Court in **Asharfi Lal** v. **Koili** (AIR 1995 SC 1440), following the decision of the Privy Council in **Talluri Venkata Seshayya** v. **Thadikonda Kotiswara Rao** (AIR 1937 P.C.1).

6. Per contra, it is argued on behalf of the claimants that the dismissal of an earlier application filed on behalf of the minors does not bar a second application and it is not necessary to establish that the guardian had acted negligently, in the prosecution of the earlier case. Cited in support are the decisions of the Division Bench of the Karnataka High Court in **Anandrao Shivaji Rao** v. **Ashok Kumar** (1981 ACJ 438) holding that the dismissal of an earlier application for non prosecution is no impediment for the minors to apply for compensation on attaining the age of majority and of the Madras High Court in **Dadasahib** v. **Gururaj Singh** (1924 (47) MLJ 928) that where the guardian of a minor had not taken steps for summoning a witness on a date of hearing and the pleader's

request for adjournment was refused, resulting in a decree against the minor, the guardian was held guilty of gross negligence and the decree as not binding on the minor. The counsel for the claimants further argued that Ext.B1 will not disclose that the earlier application was for and on behalf of the minors and therefore, they cannot be treated as parties to the said proceedings. It is pointed out that the minors were not even named in the array of parties to the application to condone delay, which was disposed of as per Ext.B1.

7. The decision of the Apex Court referred to on behalf of the appellant is authority for the proposition that a decree in a litigation affecting a minor, represented by guardian, can be impeached on ground of negligence of the guardian, only upon fraud or collusion being established, coupled with such negligence by the guardian. The case of **Anandrao Shivaji Rao** (supra) was a situation where a minor was the injured and the dismissal of the earlier application filed on her behalf, by her mother was held not to bar a later application by the injured.

The decision of the Madras High Court in **DadaSahib**'s case (supra) essentially shows only a fact situation where a decree was held liable to be avoided on account of gross negligence of the guardian. The said decisions do not really have any direct bearing on the facts arising for decision in this case.

8. Ext.B1 would show that a claim petition and an application to condone delay in applying for compensation were filed by Joseph Aprem, the husband of Theyyamma. The two minors Biju and Beena who are the claimants in the present case are enlisted as petitioners 2 and 3 in the claim petition, while they are not parties to the application to condone delay, which was dismissed on the ground that no sufficient cause is shown. Following the dismissal of the application to condone delay, the Tribunal ought to have dismissed the claim petition on that ground. Be that as it may, a perusal of the cause title of Ext.B1 order would show that barring the enlistment of Biju and Beena as two minors, the claim petition did not contain any statement that they are represented by their next friend or guardian, Joseph Aprem,

their father who is the first petitioner therein. Under such circumstances, since I needed to see the claim petition in Ext.B1 case, to ensure that justice is done in the situation, a certified copy of it is made available. It shows that even in the application, Biju and Beena are shown as minors, but none is shown to represent them as next friend or guardian. The said application also does not contain any statement that it is filed on behalf of the minors also, while I find the following statement therein:

> "I Aprem son of Joseph, Pazhiyankal House, Chirackadavu kara, Chirackadavu village apply as the legal representative for the grant of compensation on account of the death of my wife Theyyamma who died as a result of injuries sustained in a motor vehicle accident"

In column No.28 of that application relating to 'any further information that may be necessary or helpful in the disposal of the claim', there is a statement that the deceased has left two minor children Biju and Beena and that the deceased was 24 weeks pregnant while she was run over by the motor vehicle and

that the driver was found guilty. The said application concludes by stating "I, Joseph Aprem, the applicant, solemnly declare that the particulars given above are true and correct to the best of my knowledge". Under such circumstances, I have no hesitation to conclude that the claim petition on the basis of which Ext,B1 order was passed was not one filed for or on behalf of the minor children. That apart, they were not parties to the application to condone delay.

9. A reference to Section 110 A of the Motor Vehicles Act, 1939 which was the law applicable to Ext.B1 proceedings would show that an application for compensation on account of death has to be filed by all or any of the legal representatives, provided that where all the legal representatives are not shown in the application, it shall be made on behalf of and for the benefit of all the legal representatives of the deceased and the legal representatives not so joined shall be impleaded as respondents to the application. Ext.B1 proceedings was without any statement that the application is on behalf of the minors also

and was therefore, not in compliance with the said statutory provision.

10. In view of the aforesaid, Ext.B1 proceedings does not bind the minor children of the deceased. The Tribunal was hence justified in allowing the claim. I find no legal infirmity in the impugned award.

11. Before parting, it needs to be noticed that the Tribunal has done real justice to the helpless claimants, a boy and a girl, aged 8 years and 3 years, respectively, when they lost their mother, then pregnant. It is also the uncontroverted testimony of the first claimant that after six months of their bereavement, their father remarried, leaving them to the care of their maternal uncles. The impugned award is well within the framework of law, including the statutory provisions and renders justice to the minors. To recall **Arthasastra**, the Judges are required to look into the affairs of different categories, including women, minors etc. who are helpless. - See 3.20.22 of Part II of the english

translation of the **Kautiliya Arthasastra,** with critical and explanatory notes, by R.P.Kangle.

In the result, the appeal fails. It is dismissed with costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

M.F.A.NO.1269 OF 1995

JUDGMENT

20TH NOVEMBER, 2006.

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